

REMARKS

Claims 1-43 are pending in this application. Claims 1-3, 7-10, 12-16, 18, 19, 22-26, 28, 30-32, 34-41 and 43 have been rejected under 35 U.S.C. § 102(b) as being anticipated by International Application Publication No. WO 99/57693 (Zeskind et al.). In addition, claim 33 has been rejected under 35 U.S.C. § 103(a) as being obvious over Zeskind et al. in view of U.S. Patent No. 4,555,712 (Arway et al.).

It is noted with appreciation that claims 4-6, 11, 17, 20, 21, 27, 29 and 42, while objected to as being dependent upon a rejected base claim, were indicated to be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

In addition to the foregoing, the disclosure was objected to on the grounds that the expression "Figs. 4-10" on page 3, at line 24, should be changed to "Figs. 4, 5, 6, 7, 8, 9a, 9b, 9c and 10". Also, claim 37 was objected to because it should be dependent from claim 36, instead of claim 35.

In response, Applicant has amended "Figs. 4-10" as requested by the Examiner. Moreover, claim 37 has been amended to render it dependent from claim 36 and not claim 35.

In response to the rejection of the claims over Zeskind et al., Applicants are claiming priority under 35 U.S.C. § 120 to Application Serial No. 09/290,298 filed on April 13, 1999, which in turn claims priority to Provisional Application No. 60/083,946 filed May 1, 1998. Application Serial Nos. 09/290,298 and 60/083,946 are substantially identical in all material respects to the cited reference Zeskind et al. This priority claim accords Applicants a filing date of at least April 13, 1999, predating the publication date of November 11, 1999, for Zeskind et al. Thus, Zeskind et al. is no longer prior art to the rejected claims of the present application.

Applicants are entitled to the benefit of prior Application Serial No. 09/290,298 under 35 U.S.C. § 120 and Application Serial No. 60/083,946 under 35 U.S.C. § 119(e), because the following conditions are met (See MPEP § 201.11):

1. The present application is an application for a patent for an invention which is also disclosed in the prior applications, Serial Nos. 09/290,298 and 60/083,946 and which is sufficient to comply with the requirements of the first paragraph of 35 U.S.C. § 112;

2. The present application was copending with Application Serial No. 09/290,298;
3. The present application is being amended to contain a specific reference to Application Serial Nos. 09/290,298 and 60/083,946;
4. The present application was filed by two inventors named in the previously filed application Serial Nos. 09/290,298 and 60/083,946;
5. The benefit claim under 35 U.S.C. § 120 and under 35 U.S.C. § 119(e) is being made pursuant to a petition for an unintentionally delayed claim.

Addressing these requirements in order, it is clear that the first requirement is met. If Zeskind et al. did not meet the requirements of 35 U.S.C. § 112 with respect to the rejected claims, Zeskind et al. would not be a proper reference against those claims and therefore could not be cited. Since the Examiner has determined that Zeskind et al. anticipates certain claims in the present application, and since Application Serial No. 09/290,298 is in all material respects identical to Zeskind et al., the subject matter of at least those claims rejected over Zeskind et al. must be disclosed in Application Serial No. 09/290,298 in the manner provided by 35 U.S.C. § 112, first paragraph. This subject matter is also disclosed in Application Serial No. 60/083,946.

The second requirement, copendency, is also met. The present application was filed on December 12, 2001, while U.S. Patent No. 6,339,373, which issued from Application Serial No. 09/290,298 did not issue until January 15, 2002. Therefore, there was a brief period during which the two applications were copending.

Applicants are amending herein the present application to contain a reference to Application Serial No. 09/290,298 and Application Serial No. 60/083,946. Therefore, the third requirement is met.

The inventors in Application Serial No. 09/290,298 and Application Serial No. 60/083,946 are Dale A. Zeskind, Dennis Lonigro and Donald Smith. The Applicants in the present application are Dennis Lonigro, David J. Wilbur and Dale A. Zeskind. Thus, the present application and Application Serial Nos. 09/290,298 and 60/083,946 have two inventors in common, and the fourth requirement is met.

While Applicants did not assert their claim for priority within four months from the actual filing date of the present application, or within 16 months from the filing date of the prior application, Applicants are submitting herewith a Petition for an Unintentionally Delayed Claim. This petition contains the reference required by 35 U.S.C. § 120 to Application Serial No. 09/290,298, the reference required by 35 U.S.C. § 119(e) to Application Serial No. 60/083,946, the surcharge required by 37 C.F.R. § 1.17(t), and a statement that the entire delay was unintentional between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and § 1.78(a)(5)(ii) and the date the claim was filed. Therefore, it is submitted that this requirement is met.

It is respectfully submitted that because the present application is entitled to a claim of priority to at least Application Serial No. 09/290,298, (and as well to Provisional Application No. 60/083,946 filed May 1, 1998), Zeskind et al. is no longer a prior art reference to the rejected claims under any provision of 35 U.S.C. § 102 or Section 103. Therefore, it is respectfully submitted that all of rejected claims 1-3, 7-10, 12-16, 18, 19, 22-26, 28, 30-41 and 43 are allowable.

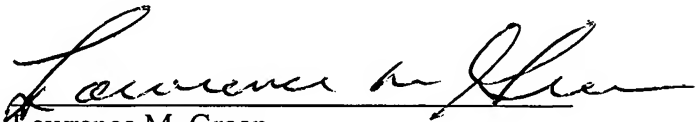
Claim 33 was rejected over a combination of Zeskind et al. and Arway et al. Since Zeskind et al. is no longer a proper reference, this ground for rejection has been overcome. Moreover, it is respectfully submitted that Arway et al. does not render obvious claim 33. Arway et al. is related to the use of a valve to introduce a solvent into a process solution to reduce the viscosity of the process solution to maintain a nominal flow rate. Arway measures the length of time required for a given volume of ink to flow through an ink jet nozzle. Arway et al. then injects solvent into the ink to maintain the proper viscosity of the ink so that the desired flow rate is achieved. Arway does not disclose or suggest clearing a plugged port, as recited in claim 33. Rather, Arway et al. uses a solvent simply to maintain the proper viscosity of the ink.

In view of the foregoing amendments to correct the objections to the disclosure and the claims, and in view of the claim of priority to Application Serial Nos. 09/290,298 and 60/083,946, it is respectfully submitted that all of the claims in this application are in condition for allowance. The Examiner is respectfully invited to telephone Applicant's undersigned attorney should he feel that such a telephone call would further the prosecution of the present application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted
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